`IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Revision under and in terms of Section 34 (2) of the Right to Information Act No. 12 of 2016 read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Application
No. RTI/01/2024
Case No. RTIC Appeal No.808/2023

1. The Open University of Sri Lanka,
   P.O. Box 21,
   Nawala,
   Nugegoda.

2. Pattinikutti Mudiyanselage Chandralal Thilakerathne,
   Vice Chancellor,
   The Open University of Sri Lanka,
   P.O. Box 21,
   Nawala,
   Nugegoda.

3. Snr. Prof. G.W.A.R. Fernando

4. Prof. N. Abeysekara

5. Prof. D.D.A. Piyarathne

6. Dr. H.G.P.A. Ratnaweera

7. Dr. B.S.S. De Silva

8. Dr. (Mrs.) D.V.M. De Silva

9. Snr. Prof. C.S. De Silva

10. Snr. Prof. S.R. Weerakoon

11. Snr. Prof. H.D. Karunaratne

12. Mrs. D.P.U. Welaratne

13. Mr. K.R. Uduwawala

14. Prof. Ranjith Senarathne

15. Dr. N.C. Kumarasinghe

16. Dr. Prasad Samarasinghe

17. Dr. J.G.L.S. Jayawardena

18. Eng. Ranjith G. Rubasinghe

19. Mr. Ruban Wickramaarachchi

20. Mr. Tissa Nandasena

21. Ms. Gayani De Alwis

22. Mr. Nuwan Withanage

23. Mr. Thusantha Wijemanna

24. Mr. K.T.K. Prasanna Arampath
    Members of the Council,
    The Open University of Sri Lanka,
    P.O. Box 21,
    Nawala,
    Nugegoda.

PETITIONERS

Vs.

1. The Right to Information Commission,
   Room No.203-204,
   BMICH,
   Bauddhaloka Mawatha,
   Colombo 07.

2. Justice Upali Abeyratne,
   Chairman,
   The Right to Information
   Commission,
   Room No.203-204,
   BMICH,
   Bauddhaloka Mawatha,
   Colombo 07.

3. Justice Rohini Walgama,
   Commissioner,
   The Right to Information
   Commission,
   Room No.203-204,
   BMICH,
   Bauddhaloka Mawatha,
   Colombo 07.

4. Kishali Pinto Jayawardena,
   Commissioner
   The Right to Information
   Commission,
   Room No.203-204,
   BMICH,
   Bauddhaloka Mawatha,
   Colombo 07.

5. Jagath Liyana Arachci,
   Commissioner,
   The Right to Information
   Commission,
   Room No.203-204,
   BMICH,
   Bauddhaloka Mawatha,
   Colombo 07.

6. Mohamed Nahiya,
   Commissioner,
   The Right to Information
   Commission,
   Room No.203-204,
   BMICH,
   Bauddhaloka Mawatha,
   Colombo 07.

7. R. A. Janaka Roshan Ranasinghe,
   Jaya Mawatha,
   Diwullewa,
   Galgamuwa.

8. R.A.D. Sashindya Ranasinghe,
   Jaya Mawatha,
   Diwullewa,
   Galgamuwa.

RESPONDENTS

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Pulina Jayasuriya, S.C. for the Petitioners.

Aruni Senarathna for the 1st – 6th Respondents.

7th and 8th Respondents are absent and unrepresented.

Written Submissions: Not filed.

Not filed.

Argued On: 12/02/2026.

Judgement On: 08/05/2026.

Dr. Sumudu Premachandra J.

1] This dispute stems from an information request made by R.A. Janaka Roshan Ranasinghe, the 7th Respondent, on behalf of his daughter, R.A.D. Sashindya Ranasinghe, the 8th Respondent, seeking access to her answer scripts and marks from the LLB Selection Test of the Open University held on 08/01/2023.

The Petitioners state that the university's Information Officer and Designated Officer initially refused this request on 10/07/2023 and 17/07/2023, respectively, relying on Section 5(1)(l) of the Right to Information Act, No. 12 of 2016. They argue that the disclosure of examination-related materials, including answer scripts and details of evaluators, would compromise the integrity and confidentiality of the examination process and set a harmful legal precedent.

2] However, following an appeal by the 7th Respondent, the Right to Information Commission issued a determination on 28/11/2023, directing the university to release the requested information. Challenging this decision, the Petitioners contend that the Commission erred both in fact and in law by failing to appreciate that the release of answer scripts would reveal the nature and structure of the examination, thereby undermining its security.

3] They further assert that the Commission's directive, communicated to the university by letter dated 07/12/2023, would cause irreparable harm to the institution. In support of their application, the Petitioners have annexed several documents, including the original information request and consent letter (P1 and P2), an extract of the LLB Selection Test mark sheet (P3), the relevant university By-Laws governing examinations (P4), correspondence involving the Legal Officers (P5, P6, and P7), appeals submitted by the 2nd and 7th Respondents (P8 and P9), the Commission's decision and notice of receipt (P10 and P11), and the University Council's Resolution dated 24/11/2023, authorizing the institution to pursue legal action (P12).

4] For the aforesaid reasons, the Petitioners prays that this Court be pleased to;

a) Issue Notice on the Respondents;

b) Issue an Interim Order staying the operation of the decision of the 1st Respondent marked P10 until the final determination of this application;

c) Enter the Judgement revising the decision of the 1st Respondent marked P10;

d) Grant costs and such other and further reliefs as Your Lordships' Court may seem meet.

5] The parties made oral submissions, I am mindful of those submissions, I now consider the merits of this case.

6] The request application was refused under section 5(1) (l) of the Right to Information Act, No. 12 of 2016. It says;

> *"5. (1) Subject to the provisions of subsection (2), a request under this Act for access to information shall be refused, where–*
>
> *(l) disclosure of the information would harm the integrity of an examination being conducted by the Department of Examination or a Higher Educational Institution;"*

7] In the Sinhala text, it says;

> ***"5. (1) (2) වන උපවගන්තියේ විධිවිධානවලට යටත්ව;***
>
> ***(ඕ) විභාග දෙපාර්තමේන්තුව හෝ උසස් අධ්‍යාපන ආයතනයක් විසින් පවත්වනු ලබන යම් විභාගයකට අදාළ තොරතුරු රහසිගතව තබා ගැනීමට නියමිත වන්නා වූ අවස්ථාවක දී...***
>
> ***මේ පනත යටතේ ඒ තොරතුරුවලට ප්‍රවේශ වීම ප්‍රතික්ෂේප කළ හැකි ය."***

8] It is seen that the Sinhala reading of this Section shows a different element in this regard, stating that the information so requested must be 'confidential'. I do not see any reason to refuse if an examinee requests their own answer script, which they wrote, and how it was marked. If a standard marking scheme were applied, to protect the integrity of the higher institution, it should be revealed.

There cannot be hide-and-seek games in higher institutions, and transparency is a paramount consideration as required by Article 14A of the Constitution and the preamble of the Right to Information Act. It is reproduced below for clarity.

> *"WHEREAS the Constitution guarantees the right of access to information in Article 14A thereof and there exists a* ***need to foster a culture of transparency and accountability in public authorities*** ***by giving effect to the right of access to information*** *and thereby promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance."* [Emphasis is added]

9] In ***Bank of Ceylon Vs Right to Information Commission and S.M. Pasansani Anuradha*** (CA/RTI/REV/05/2021), decided on 12/02/2024, the Court of Appeal upheld the decision of the RTIC to disclose information of candidates who sat for a competitive examination conducted by the Department of Examinations to recruit Trainee Staff Assistants to the Bank of Ceylon, dismissing the appeal. The Court ruled that the disclosure related to public activity and interest, emphasizing that the concerned citizen represented broader public interests.

10] Under Section 5(1) (l) of the Right to Information Act, No. 12 of 2016 in Sri Lanka, a Public Authority may refuse to disclose information if it would "harm the integrity of an examination being conducted by the Department of Examination or a Higher Educational Institution". However, this exemption is not absolute, and requests for marked answer scripts are often evaluated based on public interest and the ability to sever exempt information. The Public Authority cannot refuse as a bare denial without well-founded facts.

11] In a matter of a candidate's access to his/her own answer sheets, the Indian Supreme Court in the decision of ***CBSE v. Aditya Bandopadhyay*** (2011) 8 SCC

497, Raveendran, J., has held that a beneficiary cannot be denied personal information relating to them;

> *"11. The definition of 'information" in Section 2(f) of the RTI Act refers to any material in any form which includes records, documents, opinions, papers among several other enumerated items. The term "record" is defined in section 2(i) of the said Act as including any document, manuscript or file among others. When a candidate participates in an examination and writes his answers in an answer-book and submits it to the examining body for evaluation and declaration of the result, the answer-book is a document or record. When the answer-book is evaluated by an examiner appointed by the examining body, the evaluated answer-book becomes a record containing the 'opinion' of the examiner. Therefore, the evaluated answer-book is also an 'information' under the RTI Act."*
>
> *"The right to access information does not extend beyond theperiod during which the examining body is expected to retain the answer books".*
>
> *"…every examinee will have the right to access his evaluated answer-books, by either inspecting them or taking certified copies thereof unless the same was exempted under Section 8 (1) (e) of the RTI Act, 2005."*

12] Further, in the Supreme Court decision of ***Mradul Mishra v. Chairman, UPSC***, Civil Appeal 6723 of 2018, it was held that:

> *"14. In our opinion, permitting a candidate to inspect the answer sheet does not involve any public interest nor does it affect the efficient operation of the Government. There are issues of confidentiality and disclosure of sensitive information that may arise, but those have already been taken care of in the case of Aditya Bandopadhyay where it has categorically been held that the identity of the* ***examiner cannot be disclosed for reasons of confidentiality****.*

That being the position, we have no doubt that the Appellant is entitled to inspect the answer sheets. Accordingly, we direct the Respondent – U.P. Public Service Commission to fix the date, time and place where the Appellant can come and inspect the answer sheet within four weeks."

13] Thus, it is to be stressed that every examinee will have the right to access their evaluated answer-books, subject to the confidentiality of the examiner who marked the answer sheet. The Public Authority By-Laws (P4) cannot supersede Section 4 of the RTI Act. It says;

"4. The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law, and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail."

14] Thus, the University By-Laws suppressing the RTI has no force in law and we are of the view that the decision of RTI Commission is well founded and cannot be refuted. Thus, the provisions of the RTI Act prevail over the University By-Laws. We are, therefore, of the view that the decision of the RTI Commission cannot be found fault with.

15] This court, by ex mero motu, sees that the Public Authority filed a revision application despite having the right of appeal under 34(1) of the RTI Act. It says;

"Section 34(1) of the Act says, "34. (1) A citizen or public authority who is aggrieved by the decision of the Commission made under section 32, may appeal against such decision to the Court of Appeal within one month of the date on which such decision was communicated to such citizen or public authority".

16] There is no reason given for not being able to avail the statutory remedy. It is to be noted that every Public Authority has a legal officer, and the decision dated 09/11/2023 was personally taken by the Information Officer/Deputy

Registrar (Legal), Mrs R.L.W. Rajapakshe. Hence, the outcome of the appeal was noticed on that day itself, and we cannot see any impediment to exercising the appellate jurisdiction in this regard.

17] Article 138(1) of the Constitution states;

> *"The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance, tribunal or other institution and sole and exclusive cognizance, by way of appeal,* ***revision*** *and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things of which such High Court, Court of First Instance, tribunal or other institution may have taken cognizance: Provided that no judgement, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice."*

18] However, exercising the revisionary jurisdiction is a discretionary remedy, unlike in an appeal. Further, the courts exercise revisionary jurisdiction only if there are 'exceptional circumstances' that warrant the court to exercise its discretion. In this matter, nothing is shown as exceptional circumstances.

19] The section 34(2)[1] mentioned does not create revisionary jurisdiction unless exceptional circumstances are shown. In Sri Lanka, a revision application can be filed in a higher court even if a right of appeal exists, but it is generally reserved for exceptional circumstances, such as when an order is manifestly erroneous and causes great injustice. While the appeal is a matter of right, revision is discretionary, used when an Order is ex facie wrong or to prevent a miscarriage of justice. In the case at hand, that does not warrant us to intervene by excising revisionary jurisdiction.

20] The discretionary power of the apex courts in exercising the revisionary jurisdiction is discussed in ***Rustom Vs Hapangama*** (1978/79) 1 Sri L.R 352. In that Ismail J observed that the general rule is that while the power of revision available to the Supreme Court is a discretionary power the courts have consistently refused to exercise this power when an alternative remedy which was available to the applicant was not availed before the applicant sought to avail a remedy by way of revision.

21]In the case of ***Attorney General v. Podisingho*** 51 NLR 385, Dias S.P.J, held as;

> *"even though the revisionary powers should not be exercised in cases when there is an Appeal and was not taken, revisionary powers should be exercised only in exceptional circumstances such as miscarriage of justice, where a strong case for interference of the Supreme Court is made out for."*

[1] *"34(2) Until rules are made under Article 136 of the Constitution pertaining to appeals under this section, the rules made under that Article pertaining to an application by way of revision to the Court of Appeal, shall apply in respect of every appeal made under subsection (1) of this section."*

22] In ***Indika Roshan Francis vs Bulathsinghalage Lal Cooray and other***, SC/Revision/02/2019, Decided on: 25/03/2022, L.T.B Dehideniya, J., held;

> *"This is an instance where there was a right to appeal available for the Petitioner, nevertheless, the Petitioner did not act in due diligence to comply with it. In the context of the present Application there was a right to appeal in terms of Supreme Court Rules and Section 9(a) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990. According to the reasons set out in the Petition, the Petitioner states that, he was unable to file an Application for Leave to Appeal in this Court within the due period of time for the reason of ill health. A closer look at the submissions reveals that, the Petitioner's reasoning for non- compliance with the right of appeal is not credible enough to justify a miscarriage of justice. Therefore, it is 10 clear to this court that the Petitioner has failed to establish compelling evidence as exceptional circumstances to accept a Revision Application.*
>
> *By considering above circumstances, I am of the view that in an instance where the Petitioner did not act in due diligence to comply with his right of appeal and where Supreme Court has not been vested revisionary power by any law, it is not possible to intervene and consider the Petitioner's Revision Application as this Court has no jurisdiction to entertain such Application. I proceed to dismiss this Revision Application"*

23] In ***SUNIL CHANDRA KUMARA v. VELOO***, [2001] 3 SLR 91, Jayasinghe, J., held as;

> *"Revision is a discretionary remedy; it is not available as of right. This power that flows from Art. 138 is exercised by the Court of Appeal, on application made by a party aggrieved or* ***ex mero motu****, this power is available even where there is no right of appeal. The Petitioner in a Revision*

application only seeks the indulgence of Court to remedy a miscarriage of justice. He does not assert it as a right. Revision is available unless it is restricted by the constitution or any other law." [Emphasis is added]

24] Thus, we are of the view that the Petitioner Public Authority has not acted with due diligence, and attended circumstances do not warrant our intervention. Therefore, this revision is dismissed, no costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL